

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Local Telephone Competition and Broadband
Reporting

WC Docket No. 04-141

REPORT AND ORDER

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By the Commission: Chairman Powell, Commissioners Copps and Adelstein issuing separate statements.

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REPORTING (FCC FORM 477)	

I. INTRODUCTION

1. In this Report and Order (Order), we adopt rules and a standardized form to improve our Form 477 local competition and broadband data gathering program,¹ including extending the program for five years beyond its currently designated sunset in March 2005, eliminating existing reporting thresholds, and gathering more granular data from service providers. The information collected in the Form 477 program helps the Commission and the public understand the extent of local telephone competition and broadband deployment, which is important to the nation's economic, educational, and social well-being. The improvements we adopt here, which include some but not all of the modifications proposed in our recent *Data Collection NPRM*,² are necessary to ensure that the Commission can continue to effectively evaluate broadband and local competition developments as they affect all Americans. At the same time, we have acted to minimize, wherever possible, the administrative burdens imposed on reporting entities by the modified Form 477 program.

II. BACKGROUND

2. The *Data Gathering Order* established a reporting program (using the FCC Form 477) to collect basic information about two critical areas of the communications industry: the deployment of broadband services and the development of local telephone service competition. The Commission concluded that collecting this information would materially improve its ability to develop, evaluate, and revise policy in these rapidly changing areas and provide valuable benchmarks for Congress, the Commission, other policy makers, and consumers.³ Since adoption of the Form 477 in 2000, broadband service providers and local telephone service providers have reported data ten times,⁴ and we have issued regular reports based in significant part on this information.⁵ In the *Data Gathering Order*, the

¹ See *Local Competition and Broadband Reporting*, CC Docket No. 99-301, Report and Order, 15 FCC Rcd 7717 (2000) (*Data Gathering Order*).

² *Local Telephone Competition and Broadband Reporting*, WC Docket No. 04-141, Notice of Proposed Rulemaking, 19 FCC Rcd 7364 (2004) (*Data Collection NPRM*).

³ *Data Gathering Order*, 15 FCC Rcd at 7724, paras. 11 *et seq.*

⁴ Broadband and local telephone service providers filed Form 477 data for the first time on May 15, 2000, reporting connections in service as of December 31, 1999; they filed the second set of data, reporting connections in service as of June 30, 2000, on September 1, 2000. Thereafter, providers have filed year-end data each March 1 and mid-year data each September 1.

⁵ See *Availability of Advanced Telecommunications Capability in the United States*, GN Docket No. 04-54, Fourth Report to Congress, FCC 04-208 (rel. Sept. 9, 2004) (*Fourth 706 Report*); *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, Report, 17 FCC Rcd 2844 (2002) (*Third 706 Report*); *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, Second Report, 15 FCC Rcd 20913 (2000) (*Second 706 Report*). Additionally, the Wireline Competition Bureau summarizes information from the Form 477 program in two semiannual statistical reports – the Local Telephone Competition report and the High-Speed Services for Internet Access report – that are available at <http://www.fcc.gov/wcb/iatd/comp.html>.

Commission adopted a sunset provision pursuant to which the collection program terminates after five years (*i.e.*, in March 2005) unless the Commission acts to extend it.⁶

3. Form 477 includes separate sections on broadband deployment,⁷ local telephone service competition,⁸ and mobile telephone service provision.⁹ In the *Data Gathering Order*, the Commission required entities to report only when they meet or exceed defined reporting thresholds, and, then, to complete only those portions of the form for which they meet or exceed the reporting thresholds.¹⁰ The Commission required entities that meet a threshold to file data on a state-by-state basis.¹¹ The Commission also required facilities-based providers of broadband connections and local exchange carriers (LECs) to report lists of the Zip Codes in which they serve end users, for each state for which they complete a form. In the case of broadband connections, reporting entities include incumbent and

⁶ *Data Gathering Order*, 15 FCC Rcd at 7764, para. 104.

⁷ We use the terms "broadband" and "high-speed" as synonyms in the Form 477 program, to refer to connections that transfer information at rates exceeding 200 kbps in *at least one* direction. The current Form 477 further distinguishes between "one-way broadband" (*i.e.*, faster than 200 kbps in *one* direction (typically downstream) and less than or equal to 200 kbps in the other direction (typically upstream)) and "full broadband" (*i.e.*, faster than 200 kbps in *each* direction). The Commission has used the term "advanced services" as a synonym for "full broadband." *See, e.g., Third 706 Report, Second 706 Report.* In the *Fourth 706 Report*, we used the term "first generation broadband" to refer to connections with speeds at or near 200 kbps in each direction. *Fourth 706 Report* at 13.

⁸ For purposes of this proceeding, we use the terms "local telephone service," "local telecommunications service," and "local exchange and exchange access services" to refer collectively to the services that are subject to the local competition reporting requirements adopted in this Order. These internal references are not meant to affect or modify any existing definitions of similar terms, such as "telephone exchange service," "exchange access," and "telecommunications service" as set forth in the Act and our prior orders. *See, e.g., 47 U.S.C. §§ 153(16), (46), (47); Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501 (1998).

⁹ For purposes of this proceeding, the term "mobile telephone service" has the same meaning as used in the *Data Gathering Order*. *See Data Gathering Order*, 15 FCC Rcd at 7735-36, para. 32 (noting that the mobile telephony market generally includes providers of cellular, broadband personal communications service (PCS), and specialized mobile radio services that offer real-time, two-way switched voice service that is interconnected with the public switched network utilizing an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless handoffs of subscriber calls). *See also* 47 C.F.R. § 20.15(b)(1). While only facilities-based mobile telephone service providers complete Form 477, those filers report the total number of voice telephone service subscribers served over their systems, whether served directly or via resale by an unaffiliated entity. *See Data Gathering Order*, 15 FCC Rcd at 7756-57, para. 84.

¹⁰ For the current Form 477, the state-specific reporting threshold for Part I (Broadband) is 250 or more facilities-based high-speed lines (or wireless channels) connecting end users to the Internet. The threshold for Part II (Wireline and Fixed Wireless Local Telephone) is 10,000 or more voice-grade equivalent lines (or wireless channels) that provide voice telephone service to end users either directly or *via* resale to unaffiliated telecommunications carriers. The threshold for Part III (Mobile Local Telephone) is 10,000 or more mobile telephone service subscribers that are served over the filer's facilities, including subscribers billed directly by the filer, pre-paid subscribers, and subscribers billed by a service reseller.

¹¹ Section 3(40) of the Communications Act defines "state" to include the District of Columbia and the U.S. territories and possessions. 47 U.S.C. § 153(40).

competitive LECs, cable companies, operators of terrestrial and satellite wireless facilities, municipalities, and any other facilities-based provider of broadband connections to end users.¹²

4. In the *Data Collection NPRM*, we proposed to: (1) extend the data collection for an additional five years; (2) modify Form 477 to collect more-detailed information about broadband connection speeds and the localized deployment of broadband technologies; (3) collect information about subscribership to bundled local and interstate long distance telephone services; and (4) eliminate or revise those local telephone service questions that elicit imprecise or infrequently used information. We also invited comment on whether we should eliminate or lower the current reporting thresholds; modify our policies for publishing or sharing Form 477 data; require filers to categorize broadband connections according to the information transfer rates observed by end users; and require filers to report numbers of broadband connections in service by Zip Code or technology, or, alternatively, by Zip Code, technology, and speed.

III. DISCUSSION

5. We have considered the record of this proceeding, including comment about reporting burdens associated with current Form 477 reporting requirements, potential burdens associated with additional reporting requirements proposed or otherwise noticed for discussion in the *Data Collection NPRM*, and potential burdens associated with alternatives suggested by the parties, as well as our experience with the Form 477 to date. As discussed below, in this Order we: (1) extend the Form 477 program for five years beyond its currently designated sunset in March 2005; (2) eliminate reporting thresholds; and (3) adopt various modifications to the Form 477.

A. Five-Year Extension

6. We conclude that it is reasonable to extend the Form 477 program for five years beyond the current March 2005 sunset given our statutory obligations to study and report on the availability of broadband capability,¹³ as well as our continuing obligations to promote telecommunications services competition generally.¹⁴ We conclude that extending the Form 477 program for an additional five years with the modifications discussed below will materially improve the Commission's ability to develop, evaluate, and revise policy in the rapidly changing areas of broadband deployment and local telephone

¹² See 47 C.F.R. §§ 1.7001(b), 43.11(a). In the Form 477 data collection program, the facilities-based provider of the broadband line (or wireless channel) that connects to the end user premises reports that connection irrespective of whether the end user of the retail services delivered over that connection is billed by the filer (including affiliates), by an agent of the filer, or by an unaffiliated entity. An entity is considered to be a facilities-based broadband provider if it provides broadband services over facilities that it owns or obtains from another entity and provisions/equips as broadband.

¹³ The Commission is required to regularly report about the availability of broadband (advanced telecommunications) capability pursuant to section 706(b) of the Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56, codified 47 U.S.C. §§ 151 *et seq.* (1996 Act).

¹⁴ The Telecommunications Act of 1996 amended the Communications Act of 1934 to direct the Commission to take actions to open all telecommunications markets to competition in order to promote innovation and investment by all participants, including new entrants. See Telecommunications Act of 1996 § 101, Pub. L. No. 104-104, 110 Stat. 56, 61-80 (codified as amended at 47 U.S.C. §§ 251-61); Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess., at 1 (1996).

competition, and provide valuable benchmarks for Congress, the Commission, other policy makers, and consumers. As discussed in more detail in the following sections and in the Final Regulatory Flexibility Analysis attached to this Order, we also conclude that extending the Form 477, as modified, will not impose an undue burden on the entities that are required to report. In this regard, we have taken or will take the following steps to reduce associated burdens: (1) we decline to adopt certain modifications to the Form 477 proposed in the *Data Collection NPRM*, including the proposed requirement that filers categorize broadband connections according to the information transfer rate ("speed") actually observed by the end user;¹⁵ (2) we eliminate various questions from the wireline local telephone section of the form;¹⁶ (3) we eliminate the requirement that filers seeking confidential treatment of Form 477 data prepare and submit a separate, redacted Form 477;¹⁷ (4) responding to comments submitted by the Office of Advocacy of the Small Business Administration,¹⁸ we will publish a *Small Entity Compliance Guide* to provide a set of user-friendly explanations to direct small entities to those sections of the Form 477 relevant to their operations.

7. We reject calls for extending the Form 477 program for less than five years because our statutory responsibilities to study and report on broadband deployment and encourage the development of local telephone service competition are on-going. We find that a five-year extension is prudent given continuing and rapidly-evolving developments in broadband and local telephone services markets. Reviewing the adequacy of our form at regular intervals is essential to ensure that it is, in fact, capturing the most relevant and critical information given the dynamic nature of these markets. Accordingly, we affirm our analysis and conclusion in the *Data Gathering Order*, namely, that a five-year program best balances our continuing need to understand evolving market developments against our desire to minimize costs and ensure that adopted regulation does not outlive its usefulness.¹⁹ Moreover, we disagree with comments that the availability of alternative data sources is an adequate substitute for the Form 477. In our experience, most if not all commercially available studies of residential services adoption derive their data in significant part from the Commission's Form 477-based public reports.²⁰ And, no nationwide studies of broadband deployment or of local telephone competition are based on better sources of data for rural and other hard-to-serve areas. Voluntary membership surveys conducted by commenters NTCA and OPASTCO, and also by the National Exchange Carrier Association (NECA), provide welcome evidence that the incumbent LECs that *respond* to the surveys are deploying broadband services to

¹⁵ See paras. 27-29, *infra*.

¹⁶ See paras. 22-23, *infra*.

¹⁷ See para. 25, *infra*.

¹⁸ See Letter dated August 24, 2004, from Thomas M. Sullivan, Chief Counsel for Advocacy, Small Business Administration, to the Hon. Michael K. Powell, Chairman, Federal Communications Commission (SBA Ex Parte).

¹⁹ See *Data Gathering Order*, 15 FCC Rcd at 7764, para. 104. As such, we reject alternative suggestions from certain commenters. See SBC Comments at 2 (extend for three years), Verizon Comments at 17 (extend for one more year), AT&T Comments at 6 (extend for three years), AT&T Reply at 9. Several commenters favored the full five-year extension. See NCTA Comments at 1, 8, Sprint Comments at 1, CPUC Comments at 1, KCC Comments at 1, Sprint Reply at 1. We note, in any event, that parties and the Commission can revisit this issue before five years elapse, *i.e.*, pursuant to the biennial review of FCC regulations. See 47 U.S.C. § 161.

²⁰ See, *e.g.*, American Electronics Association, *Broadband in the States 2003*, offered for sale at http://www.aeanet.org/publications/idet_broadbandstates03.asp.

substantial – and increasing – percentages of their customer base.²¹ Entities that choose not to participate in these voluntary surveys may have a different experience. By contrast, surveys such as those about Internet use conducted by the Pew Internet & American Life Project,²² and the Census Bureau's Current Population Survey, use random samples that are constructed to avoid overlooking particular population groups. To obtain statistically significant results for particular rural populations, however, a large (and therefore expensive) random sample is required. For example, because the random sample (of about 57,000 households) for the Current Population Survey does not over-sample households located in rural areas in particular states, the Department of Commerce was able to discuss nationwide differences between rural and urban households in its report, *A Nation Online: How Americans Are Expanding Their Use of the Internet* (February 2002), but was not able to discuss such differences *within* particular states. Similarly, the Pew Internet & American Life Project has compared only *nationwide* differences in Internet use by residents of rural and urban areas on the basis of random samples of about 20,000 Americans age 18 and older.²³

B. Elimination of Reporting Thresholds

8. We also modify the Form 477 program to require *all* facilities-based providers of broadband connections to end users to report broadband data, *all* local exchange carriers to report local telephone service data, and *all* mobile telephone carriers to report mobile telephone data. In reaching this conclusion, we note that comments from state agencies, and from some service providers, generally supported eliminating, or substantially reducing, the reporting thresholds.²⁴ As we stated in the *Data Collection NPRM*, we believe that the current data collection misses several hundred small facilities-based broadband providers, *e.g.*, rural incumbent LECs, wireless Internet service providers, and municipalities.²⁵ Moreover, we agree with those commenters who argue that it is important to capture a more accurate picture of broadband deployment and local telephone competition in rural, sparsely populated areas, which are more likely to be served by small carriers.²⁶

9. In reaching our conclusion, we recognize that in the *Data Gathering Order* the Commission concluded that a reporting threshold for broadband and local competition appropriately balanced its need for an inclusive reporting requirement against the burdens imposed on small entities. At the same time,

²¹ See OPA/STCO Comments at 5.

²² See Sprint Comments at 3.

²³ See, *e.g.*, Peter Bell, Pavani Reddy, and Lee Rainie, *Rural Areas and the Internet* (Pew Internet & American Life Project, 2004), available at http://www.pewinternet.org/pdfs/PIP_Rural_Report.pdf.

²⁴ See, *e.g.*, CPUC Comments at 3-4 (eliminate broadband threshold), KCC Comments at 1-3 (eliminate broadband threshold, preferably eliminate the wireline and mobile telephone thresholds), VPSD Comments at 1-2, 13 (reduce broadband threshold at least to 40, reduce wireline local telephone threshold at least to 1,000, require all licensed CMRS providers in a state to report), CPUC Reply at 3-4. See also NCTA Comments at 10 (set broadband threshold at 100), SBC Comments at 2, 6 (set local telephone thresholds at 3,000), Verizon Comments at 2, 14, 18 (eliminate all reporting thresholds). But see Cingular Comments at 3-5 (CMRS providers should not be required to report the number of broadband service subscribers), Cingular Reply at 4-5.

²⁵ *Data Collection NPRM*, 19 FCC Rcd at 7369-70, para. 10.

²⁶ See, *e.g.*, CPUC Comments at 3-4, VPSD Comments at 1-2, 13-14, CPUC Reply at 3-4. See also Verizon Comments at 14-16.

the Commission stated “[we] are committed to revising these thresholds (either upward or downward) should it be necessary based either on our experience or on changes in the relevant markets.” And, the Commission pointed out that “[by] excluding any providers we necessarily face the possibility of understating the amount of competitive activity and broadband deployment in smaller, rural areas.” Based on our experience with the Form 477 over the past nearly five years, we now conclude that the current thresholds render impossible a thorough understanding of the dynamics of broadband deployment in states with rural and/or underserved areas. We find that lowering the existing thresholds to some other, more or less arbitrary, number means that certain of these areas will continue to elude our scrutiny. Such a result seems inimical to Congress’s charge, in section 706 of the Act, that we make determinations on the “availability of advanced telecommunications capability to all Americans.” Thus, we believe that are better equipped to make sound policy determinations affecting the broadband market to the extent we have the most accurate and comprehensive data possible upon which to base our decisions.

10. Similarly, based on our extensive experience in collection local competition data, we now conclude that we must gather an appropriate amount of information about the status of local competition from all areas of the country. We believe that the current 10,000 line reporting threshold significantly understates the amount of local competition in states that include rural and/or other underserved areas. As a result, our understanding of rural and underserved market development is not as precise as it could be. Having more accurate information about competition in rural markets will assist the Commission in its review of portability and eligibility policies. Merely lowering existing thresholds to some arbitrary number does not overcome this problem or mitigate its effects.

11. Moreover, this problem predictably will only get worse as networks continue to evolve, i.e., as network architectures reflect the continued convergence of traditional telephony and broadband. Given such convergence, which was only at its initial stages when we adopted the *Data Gathering Order* almost five years ago, it becomes essential that our broadband and local competition data collection methodologies are equally comprehensive. We therefore conclude that we should collect local telephone service information on the same comprehensive basis upon which we collect information about broadband connections.

12. We conclude that the benefits to the policy making process that derive from the additional data outweigh the reporting burdens on new Form 477 filers (i.e., entities that would not be required to file Form 477 if we retained the current mandatory reporting thresholds). As we noted in the *Data Collection NPRM*, the small facilities-based broadband providers that currently file Form 477 on a voluntary basis find that only a few questions apply to their situations.²⁷ Moreover, among the smaller entities that are currently required to report broadband data on Form 477 (i.e., entities that report between 250 and 499 broadband connections in a state), 68 percent reported connections in only one technology category, and 98 percent reported connections in two or fewer technology categories. Accordingly, we conclude that the broadband reporting requirements we adopt here are not overly burdensome for small providers. Similarly, among the smaller incumbent LECs that are currently required to report wireline local telephone data (i.e., carriers that report between 10,000 and 24,999 voice-grade equivalent local exchange lines), 95 percent report only one of the five rows of information that will appear in the modified form. Therefore, we conclude that the local telephone reporting requirements we adopt here are not overly burdensome for small carriers. We also note that, for many new incumbent LEC filers, some answers (e.g., percent of local exchange lines provided over the filer’s own local loops) are unlikely to

²⁷ *Data Collection NPRM* at para. 10.

change from filing to filing, and that, more generally, filers will be able to complete their filings more efficiently as they gain experience with the data collection. We conclude that it is not possible to develop an adequately comprehensive picture of broadband deployment and local telephone competition in the United States without including information about the situation in rural, sparsely populated areas. As NECA emphasizes, the more than 1,100 rural carriers that belong to NECA's Traffic Sensitive pool generally serve sparse populations over wide geographical areas – frequently fewer than 10 customers per square mile.²⁸ Therefore, we conclude that the benefits to policy making of developing a more accurate picture of broadband deployment and local telephone competition – including in rural, sparsely populated areas – outweigh the costs of reporting that we impose on carriers that have previously been exempt from filing Form 477.²⁹

13. We recognize, however, the particular concerns about reporting burden that have been raised by smaller incumbent LECs,³⁰ and we consequently decide not to pursue at this time certain options about which we requested comment in the *Data Collection NPRM*. In particular, we decide not to require filers to determine what information transfer rate an end user actually observes on his or her broadband connection, and, as discussed below,³¹ we also decide to eliminate from the form several questions about local telephone service.

C. Modifications to Form 477

1. Broadband Data

14. Based on our review of the record in this proceeding and on our experience with the Form 477, we adopt a number of modifications to the broadband data collected by the Form 477. We conclude that these modifications are necessary to ensure that we have a full picture of developing broadband deployment trends nationwide. First, we modify the Form 477 to require filers to determine what percentage of their broadband or high-speed connections are faster than 200 kbps in both directions, and to categorize these connections into five “speed tiers” based on the information transfer rate in the connection's faster direction: (1) greater than 200 kbps and less than 2.5 megabits per second (mbps); (2) greater than or equal to 2.5 mbps and less than 10 mbps; (3) greater than or equal to 10 mbps and less than 25 mbps; (4) greater than or equal to 25 mbps and less than 100 mbps; and (5) greater than or equal to 100 mbps. Some comments in this proceeding assert that collecting information about connections with very high speeds (e.g., above 10 mbps) would be irrelevant (e.g., because connections operating at such speeds are now not generally available to consumers in the United States). As we noted in the *Fourth 706 Report*, however, we have observed some service providers offering faster and faster connections, perhaps because they are able to do so at relatively little cost, and thereby differentiate their products from competitors' slower services.³² As these faster services are introduced, it is vitally

²⁸ See National Exchange Carrier Association, *Fulfilling the Digital Dream: A report on the technology of small and rural telephone companies* (2003) at 4, available at <http://www.neca.org/media/2003AMS.pdf>.

²⁹ We note that entities serving a limited number of local telephone or broadband subscribers can seek waivers alleging that the burden of completing the Form 477 is unreasonably great. See 47 C.F.R. § 1.3.

³⁰ See, e.g., NTCA Comments at 1-3, OPASTCO Comments at 2, 6.

³¹ See paras. 22-23, *infra*.

³² See, e.g., *Fourth 706 Report* at 14 (noting increased speeds of several cable modem services over the past year).

important that we understand the evolving dynamics of higher speed broadband availability in order to fulfill our statutory responsibilities to report about whether broadband capability is available to all Americans.³³

15. We also modify Form 477 to require filers to report symmetric xDSL broadband connections separately from traditional wireline (such as T-carrier) connections,³⁴ and to separately report broadband connections delivered over electric power lines. Thus, we require filers to report broadband connections in the following technology categories: asymmetric xDSL, symmetric xDSL, traditional wireline (such as T-carrier), cable modem, optical carrier (fiber to the end user), satellite, terrestrial fixed wireless, terrestrial mobile wireless, electric power line, or "all other." In contrast to asymmetric xDSL, symmetric xDSL is well-suited to applications, such as videoconferencing, that require high-speed capacity in the upstream path as well as the downstream path.³⁵ When Form 477 was implemented, it was the Commission's understanding that symmetric xDSL service was being deployed and marketed principally to businesses, as a substitute for the more traditional T-carrier services, and the Commission therefore specified that symmetric xDSL connections should be reported along with connections over "other traditional wireline" technologies. We now observe that some symmetric xDSL services are being offered to residential end users. For example, while we note that information about a broad range of symmetric high-speed xDSL services appears in marketing materials, such as web pages, that are directed to business customers,³⁶ we also observe that some relatively low priced symmetric xDSL connections are being advertised on web pages identified specifically for residential customers.³⁷ We therefore disagree with comments that it is unnecessary or meaningless to distinguish symmetric xDSL services from traditional wireline services in the data collection.³⁸ We also decide to establish electric power line as a separate broadband technology category to enable us to monitor its deployment specifically.

³³ Some commenters argue that gathering data about broadband or high-speed services at speeds exceeding the current definition of broadband services (200 kbps) exceeds the Commission's statutory mandate under section 706(b) of the 1996 Act to report on the status of advanced telecommunications (broadband) capability. *See e.g.*, Sprint Comments at 3-4. We reject this unduly narrow interpretation of section 706(b). The Commission has consistently referred to broadband capability as an *evolving* concept. *See Third 706 Report*, 17 FCC Rcd at 2851-52, paras. 10-12, 2960. Nothing in the explicit language or legislative history of section 706(b) is inconsistent with this approach.

³⁴ T-carrier systems (introduced in the 1960s) use pulse code modulation and time division multiplexing to provide a full duplex channelized digital voice system. Current applications also include digital data transmission. The typical capacities are designated T-1 (1.544 mbps) and T-3 (44.736 mbps). Digital signal (DS) standards (DS0, DS1, DS3, etc.) are used to set the transmission rates.

³⁵ *See, e.g., Third 706 Report*, 17 FCC Rcd at 2919, Appendix B, paras. 25-26.

³⁶ For example, in the portion of its web site devoted to business customers, SBC lists three symmetric high-speed DSL service packages, ranging from \$199.95 per month for 768 kbps to \$289.95 per month for 1.5 mbps. *See, e.g.*, <http://www.sbc.com/gen/landing-pages?pid=3308>, visited Oct. 15, 2004.

³⁷ *Id.* The portion of SBC's website devoted to residential customers of DSL service advertises the SBC Yahoo! DSL Symmetric S Package at 384-416 kbps speed downstream and upstream, for \$89.99 per month on a one-year term, or \$119.95 on a month-to-month.

³⁸ *See, e.g., Verizon Comments* at 8-9.

16. Additionally, we modify Form 477 to require incumbent LECs that report DSL connections (or whose affiliates report DSL connections) to report the extent to which DSL connections are available to the residential end user premises to which the incumbent LEC offers local telephone service. Similarly, we modify Form 477 to require cable system operators that report cable modem connections (or whose affiliates report cable modem connections) to report the extent to which cable modem connections are available to the residential end user premises to which the cable system offers cable television service. We adopt these requirements in order to obtain state-level "availability" estimates from the major providers of the broadband services with the greatest residential acceptance in the United States to date, to better enable us to monitor the extent to which these broadband platforms are available to all Americans, and to ascertain with more precision the pattern of competition between these platforms.

17. In response to commenter concerns, we modify the availability metric that we proposed in the *Data Collection NPRM* to conform more closely with the system-wide metrics with which cable system operators are generally familiar.³⁹ By relying as much as possible on such industry practices, we believe that we can collect, in a minimally burdensome manner, more-detailed information about the extent to which the widely deployed and widely utilized cable modem and DSL infrastructures are available to potential residential end users in a minimally burdensome manner. We note that residential broadband connections in service in the United States are primarily cable modem or DSL connections.⁴⁰ Because of the relatively small numbers residential subscribers to broadband services that are provided by means of satellite, fixed wireless, mobile wireless, optical carrier, and other technologies, at this time, we do not require providers of those services to report availability estimates. We may, however, propose to do so in the future if circumstances warrant.

18. We also modify Form 477 to require all filers that report information about wired or fixed wireless broadband connections to end user locations to report technology-specific lists of the Zip Codes in which at least one such connection is in service. Specifically, we require separate such lists for connections provided by mean of asymmetric xDSL, symmetric xDSL, cable modem, optical carrier (fiber to the end user), satellite, terrestrial fixed wireless, electric power line, and (as a single category) other wireline technologies. With respect to mobile wireless broadband services, which are now beginning to be deployed commercially,⁴¹ we note that the end user of such a service must be within a broadband service coverage area to make use of the service, but may move around within and among

³⁹ See, e.g., NCTA Comments at 11-12, 15-16 (deployment estimates should be a percentage of video homes passed), AT&T Comments at 3 (apply only to a carrier's own loops). See also VPSD Comments at 10-13 (cable operators should report households and businesses passed by Internet-capable cable plant; CLECs using wholesale loops should have to report), KCC Comments at 2 (suggesting use of external census data could achieve greater accuracy while lowering burden).

⁴⁰ Data reported on Form 477 indicate that about 97 percent of residential broadband Internet-access connections in service in the United States are either cable modem or asymmetric DSL connections. Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *High-Speed Services for Internet Access: Status as of December 31, 2003* (rel. June 2004), Tbl. 3.

⁴¹ For example, in September 2003, Verizon Wireless announced the commercial launch of its mobile wireless broadband service in the San Diego and Washington, DC, metropolitan areas. A day later, the company announced that the service was commercially available in a total of 14 metropolitan areas, and at a number of airports. See "Verizon Wireless Expands BroadbandAccess 3G Network to Cover Markets From Coast to Coast," News Release (Sept. 22, 2004), available at <http://news.vzw.com/news/2004-09-22c.html>.

coverage areas. Particularly during the initial stages of commercial deployment, moreover, there may be a mismatch between the billing addresses of some early-adopter subscribers, such as persons who travel frequently on business, and the physical locations where the subscriber can actually use the service. Because of the particular characteristics of mobile services, some have argued that CMRS providers should be completely exempt from reporting broadband data on Form 477.⁴² We disagree. Rather, we acknowledge that mobile broadband services differ in particular respects from fixed broadband services and make provision for such differences in this data collection. In particular, we specify that mobile wireless service providers will report the number of subscribers to their mobile wireless broadband services. And, we require, at this time, that filers reporting mobile wireless broadband subscribers on Form 477 also provide a list of Zip Codes that best represent the filer's mobile wireless broadband coverage areas. We observe mobile wireless broadband service providers using Zip Code-based information in their own marketing initiatives,⁴³ and we conclude that providing such information on Form 477 will not be overly burdensome.

19. Finally, we note that various commenters argued that the Commission did not adequately identify and justify the need for the broadband (and local competition) reporting modifications proposed in the *Data Collection NPRM*.⁴⁴ We disagree. In the *Data Collection NPRM*, we carefully noted justifications for gathering information about broadband deployment and local telephone competition in the Form 477.⁴⁵ We also stated that additional information "would be extremely useful" in identifying and tracking relevant developments, particularly in rural areas.⁴⁶ Moreover, in the context of broadband deployment, we specifically noted "the emergence of competing platforms to deliver high-speed services, increasing data speeds of services offered, and a steady improvement in mass-market acceptance of services."⁴⁷ Our discussion of changes to the current Form 477 was clearly tied to these observations, as well as to the Commission's experience with the Form 477. We have carefully reviewed the record developed in response to these proposals, and find that it supports extending the Form 477 program with the modifications adopted in this Order. We also draw attention to the Commission's statements in its most recent Report to Congress, pursuant to section 706 of the 1996 Act, regarding the availability of broadband services in the United States.⁴⁸ In that Report, the Commission affirmed the need to track broadband deployment in sparsely served, rural areas, as well as the need to better track the developing consumer appetite for broadband services at speeds well in excess of the Commission's current minimum 200 kbps speed.⁴⁹ We find that all of the Form 477 modifications proposed in the *Data Collection NPRM*

⁴² See Cingular Comments at 5, Cingular Reply at 4.

⁴³ Verizon Wireless, which has reported mobile wireless broadband information on the current Form 477, provides on its web site a "Coverage Locator" tool that enables actual and potential subscribers to search for the company's mobile wireless broadband service coverage areas by Zip Code or by City and State.

⁴⁴ See Sprint Comments at 3-4, CTIA Comments at 5. See also BellSouth Reply at 1, Cingular Reply at 1-4, Verizon Reply at 3, Sprint Reply at 2-5, AT&T Reply at 1-3, 10.

⁴⁵ *Data Collection NPRM*, 19 FCC Rcd at 7365-66, paras. 1-2.

⁴⁶ *Data Collection NPRM*, 19 FCC Rcd at 7367, para. 4.

⁴⁷ *Data Collection NPRM*, 19 FCC Rcd at 7367, para. 5.

⁴⁸ See *Fourth 706 Report*.

⁴⁹ See *Fourth 706 Report*, p. 10.

and adopted here derive from these two basic concerns, as well as from regulatory mandates imposed by section 706 of the Telecommunications Act of 1996 and, more generally, by the Communications Act.⁵⁰

2. Local Telephone Data

20. Based on our review of the record in this proceeding and our experience with the Form 477, we adopt far fewer modifications to the local telephone data reported on the form. In fact, we adopt only two. First, we modify Form 477 to require LECs to report the extent to which they are also the end user's default interstate long distance carrier. We disagree with those commenters that argued such information is not relevant for monitoring local telephone service competition.⁵¹ As we noted in the *Data Collection NPRM*, consumers increasingly can choose among telephone service offerings that permit both local and long distance calling, often for a single price.⁵² Indeed, it appears to us that offering combinations of services at attractive prices appears to be an important, rapidly evolving way for providers to compete by providing potential end users more, and higher value, choices. It is important for us to more precisely understand how such bundling affects the overall development of local telephone service competition.

21. Second, we modify Form 477 to require LECs to report their use of UNE loops to serve their own end-user customers separately from their use of UNE-Platform to do so. Because the current form does not require this distinction to be made, we are not able at this time to compare data and thereby evaluate, for accuracy and completeness, the information reported to us about the numbers of UNE loops and UNE-Platform provided to unaffiliated carriers. Therefore, we modify the form to require LECs to report the extent to which they provision voice-grade equivalent lines to their own local telephone service customers over their own local loop facilities (or the fixed wireless last-mile equivalent), over UNE loops obtained from an unaffiliated carrier without switching, over UNE-Platform, or by reselling another carrier's services (such as Centrex or special access) or facilities obtained under commercial arrangements.

22. Finally, to simplify the form and thus minimize reporting burdens where possible, we eliminate from the Form 477 several questions about local telephone service that, in our experience, have confused filers or otherwise have provided information of limited usefulness. Specifically, we eliminate current requirements that force LECs to: (1) estimate the types of customers unaffiliated carriers serve by means of the lines and UNE arrangements the LEC provides; (2) report the extent to which they use local loop facilities they own and UNE loops they obtain from another carrier to provision the services the LEC provides to unaffiliated carriers for resale; and (3) report information related to "collocation" arrangements with unaffiliated carriers.

23. We also eliminate the current requirement that LECs report on the Form 477 information about special access circuits that they provide to unaffiliated carriers or to end users. (Filers' use of channelized special access circuits to provide local exchange service to their own end user customers will

⁵⁰ See 47 U.S.C. § 157 *et seq.* and, more generally, Telecommunications Act of 1996 (1996 Act), Pub. Law No. 104-104, 110 Stat. 56, codified 47 U.S.C. §§ 151 *et seq.*

⁵¹ See, e.g., Verizon Comments at 9, Sprint Comments at 4-5, CTIA Comments at 3. See also Sprint Reply at 1, Verizon Reply at 3.

⁵² *Data Collection NPRM*, 19 FCC Rcd at 7368-69, para. 8.

continue to be reflected in the Form 477 data, however.⁵³) The current Form 477 collects information about the number of special access circuits provided to unaffiliated carriers or end users irrespective of the capacity of those circuits (e.g., DS1, DS3, OCn), which seriously limits the usefulness of these data in evaluating the extent of competition. We may, however, consider collecting more precise information about special access services in the future if circumstances warrant.⁵⁴ Finally, we decide not to adopt the proposal in the *Data Collection NPRM* to require mobile telephone carriers to report the extent to which they are the default interstate long distance carrier for the mobile telephone subscribers they report.⁵⁵

D. Other Issues

24. We will retain our current policies and procedures regarding the confidential treatment of submitted Form 477 data, including the exclusive use of aggregated data in our published reports.⁵⁶ Moreover, we have decided not to adopt a different approach with regard to historical data. Almost all commenters supported our current data protection policies, and most argued that even historical data remains competitively sensitive.⁵⁷ We believe our current policies and procedures afford more than

⁵³ See SBC Comments at 4 (asserting that CLECs under-report the local telephone service lines they serve by using ILEC special access circuits). *But see* AT&T Reply at n.3 (stating that AT&T does include such voice-grade equivalent lines in its Form 477s, consistent with the reporting instructions). We observe that, as of December 31, 2003, the CLECs that file Form 477 reported reselling 2.9 million more voice-grade lines to end users than ILECs reported providing to CLECs for resale. *See* Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Local Telephone Competition: Status as of December 31, 2002* (rel. June 2004), Tbls. 3, 4. This suggests to us that ILECs may not be reporting as "other resale" (i.e., resale arrangements other than Total Service Resale) some special access circuits connecting to end user premises, which the ILEC provides to a CLEC and the CLEC uses to provide local telephone service connections to its own end user customers.

⁵⁴ For similar reasons, we reject suggestions that we add questions to the Form 477 soliciting information about local telephone service as provided by entities exclusively utilizing Voice over Internet Protocol ("VOIP"). At this time, only a very small portion of local telephone service is provided by such entities, and the regulatory status of their service offerings is subject to Commission determination in various on-going proceedings. *See, e.g., IP-Enabled Services*, WC Docket No. 04-36, *Notice of Proposed Rulemaking*, 19 FCC Rcd 4863 (2004). We also note that LECs currently required to file local telephone service information on the Form 477 may already include such information in their filings.

⁵⁵ *See, e.g.,* CTIA Comments at 3 (citing 47 U.S.C. § 332(c)(8) (CMRS providers "shall not be required to provide equal access to common carriers for the provision of telephone toll services")), Cingular Comments at 6, Verizon Comments at 9 (mobile wireless end users have no ability to select a different long-distance carrier). *See also* Sprint Comments at 5 (wireless carriers "typically provide nationwide calling").

⁵⁶ Under our current policies, filers may request confidential treatment for competitively sensitive information by using a drop-down box located on the first page of the Form 477. If the Commission receives a request for release pursuant to the Freedom of Information Act, the filer is notified and afforded an opportunity to show why the data should not be released. Additionally, the Commission only releases aggregated (non-company specific) information in its published reports. *See* Data Gathering Order, 15 FCC Rcd at 7758, para. 87. *See also* 47 C.F.R. §§ 0.457-0.461.

⁵⁷ *See, e.g.,* BellSouth Comments at 2-3, Verizon Comments at 17, NCTA Comments at 4-5, Sprint Comments at 7, CPUC Comments at 5-6, VPSD Comments at 15. *But see* OPASTCO Comments at 7-8 (arguing against the FCC disclosing even aggregated data reported by small and rural carriers). *See also* AT&T Reply at 8-9, Cingular Reply at 5-6 (greater granularity of information collection requires even greater confidential treatment measures), Sprint Reply at 7, Verizon Reply at 1, 6.

adequate protection to any entity submitting competitively sensitive information in the Form 477. We will continue, however, our current practice of publishing most of the local telephone information reported by the Bell operating companies after consultation with the individual companies.⁵⁸

25. Because filers submitting Form 477 data routinely assert that some or all such data are competitively sensitive, we see no need to continue to require them to provide a separate, redacted file. Accordingly, we eliminate that requirement. We expect that this action by itself will substantially reduce the reporting burden imposed on a large number of individual filers.

26. We also decide to retain our current policies and procedures regarding the sharing of Form 477 data with state commissions.⁵⁹ Such data sharing only occurs where state entities formally declare to us that they are willing and able to treat submitted information subject to restrictions on data release that are at least as stringent as federal requirements.⁶⁰ Commenters generally do not oppose continuing data-sharing arrangements on these terms.⁶¹

27. Upon careful consideration of the record in this proceeding, we decline to adopt certain modifications proposed or discussed in the *Data Collection NPRM*. We decide not to modify Form 477 to require filers to categorize broadband connections according to information transfer rate ("speed") that is actually observed by the end user of the broadband connection. The record of this proceeding does not identify a methodology or practice that currently could be applied, consistently and by all types of broadband filers, to measure the information transfer rates actually observed by end users.⁶² Moreover, we expect broadband service providers to be mindful of general consumer protection law and to advertise their services with sufficient accuracy to enable end users to select the offering – as distinguished by "speed tier" and other features – that best fits the end user's needs and budget.

28. We also decide not to require filers to report the number of broadband connections, by technology, in particular Zip Codes, or to report, for each Zip Code, any information about the number of connections provided in various "speed tiers." Rather, by requiring filers to report technology-specific lists of broadband Zip Codes in the modified Form 477 – and removing the reporting threshold to require all facilities-based broadband providers to report – we believe we will substantially enhance our ability to monitor the deployment of established and emerging broadband platforms. Moreover, the comments of several broadband providers asserted that developing the software and systems necessary to generate such Zip Code-level data would impose a large burden on the filer's financial and personnel resources, or

⁵⁸ These data are published as postings to <http://www.fcc.gov/wcb/iatd/comp.html>.

⁵⁹ *Data Collection NPRM*, 19 FCC Rcd at 7371, para. 13.

⁶⁰ See *Data Gathering Order*, 15 FCC Rcd at 7761-7762, para. 95, n.241.

⁶¹ See Verizon Comments at 17, NCTA Comments at 4-5, Sprint Comments at 7, CPUC Comments at 6, VPSD Comments at 15. See also VPSD Reply Comments at 1, 5.

⁶² Several commenting parties asserted that attempting to measure actual speeds experienced by end users is problematic, either due to high cost, the absence of a reliable methods, or the absence of recognized measurement standards. See, e.g., BellSouth Comments at 2, Verizon Comments at 13, OPASTCO Comments at 7, NCTA Comments at 14, AT&T Comments at 4-5, CTIA Comments at 3, CPUC Comments at 4-5. See also AT&T Reply at 5, Cingular Reply at 4, and Sprint Reply at 5.

would require a number of months to implement.⁶³ Accordingly, we decline to require broadband providers to report this level of detail at this time. We continue to recognize, however, that the presence of reported subscribers in a Zip Code does not necessarily mean service is available throughout the Zip Code,⁶⁴ and we may revisit our decisions about reporting detailed Zip Code-level data in the future. To this end, we direct the Wireline Competition Bureau to assess more fully the extent to which our Zip Code data adequately reflect the availability of service throughout a Zip Code and to report its conclusions in the next section 706 report.⁶⁵

29. Similarly, we also decide not to adopt at this time any additional requirements that were not specifically proposed in the *Data Collection NPRM*. For example, we decide not to require broadband providers to report information about the prices at which they offer broadband services to end users in particular Zip Codes,⁶⁶ to require mobile telephone carriers to estimate the percentage of wireless subscribers that use their service as a replacement for traditional landline service,⁶⁷ or to require entities to report data according to city boundaries.⁶⁸ We are not convinced at this time that potential benefits derived from collecting these additional data outweigh their associated costs.

IV. PROCEDURAL MATTERS

A. Regulatory Flexibility Act

30. As required by the Regulatory Flexibility Act (RFA),⁶⁹ the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this Order. The FRFA is set forth as Appendix C. A copy of this Order, including the FRFA, will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

⁶³ See, e.g., BellSouth Comments at 2, Verizon Comments at 11, NCTA Comments at 3, 13, AT&T Comments at 4, NTCA Comments at 2-3. But see SBC Comments at 6-7 ("SBC believes that reporting the actual number of connections per Zip Code, along with the other modifications the Commission has proposed, will provide a more accurate and complete picture of broadband deployment.") See also Verizon Reply at 1-3.

⁶⁴ See *Fourth 706 Report*, p. 30.

⁶⁵ In doing so, the Bureau may use surveys, sampling, or other necessary means of compiling information.

⁶⁶ See, e.g., VPSD Comments at 5-7 (arguing that it is critical to collect information on the speed and price of broadband services purchased in rural versus non-rural areas, and proposing two ways in which Form 477 could be modified to do this).

⁶⁷ See KCC Comments at 2-3.

⁶⁸ See KCC Comments at 3 (suggesting cities or other boundaries for which there are census or demographic data as an alternative to Zip Codes).

⁶⁹ 5 U.S.C. §§ 601 et seq., as amended by the Small Business Regulatory Enforcement and Fairness Act (SBREFA), Pub. L. No. 104-121, 110 Stat. 847 (1996).

B. Paperwork Reduction Act

31. This document contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to OMB for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collection requirement contained in this proceeding.

32. This Order contains modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under § 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collections contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we have assessed the effects of adopting these rules, and find that there may be an administrative burden on businesses with fewer than 25 employees.

33. We have assessed the effects of each of these actions on small business concerns. We find that the form that we adopt in this Order reflects our efforts to collect the information necessary to monitor the development of local competition and broadband to fulfill our statutory directives, while reducing to the lowest possible level the burden on those entities that must file the form. The categories of information requested from reporting entities ask for information that should be readily available to the reporting entities and should not require significant resources to collect.

C. Congressional Review Act

34. The Commission will include a copy of this Order in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act. *See* 5 U.S.C. § 801(a)(1)(A).

D. Accessible Formats

35. To request materials in accessible formats for individuals with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0531 (voice), or 202-418-7365 (tty).

V. ORDERING CLAUSES

36. Accordingly, IT IS ORDERED that, pursuant to sections 1-5, 10, 11, 201-205, 215, 218-220, 251-271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-155, 160, 161, 201-205, 215, 218-220, 251-271, 303(r), 332, 403, 502, and 503, and pursuant to section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 157nt, this ORDER, with all attachments, is hereby ADOPTED.

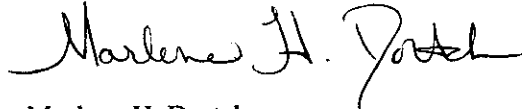
37. IT IS FURTHER ORDERED that the requirements and regulations established in this ORDER shall become effective upon approval by OMB of the modified information collection requirements adopted herein, but no sooner than thirty (30) days after publication in the Federal Register. The Commission shall place a notice in the Federal Register announcing the effective date of the requirements and regulations adopted herein.

38. IT IS FURTHER ORDERED that providers subject to the requirements and regulation established in this ORDER shall complete and file the amended Local Telephone Competition and

Broadband Reporting Form (FCC Form 477) no later than September 1, 2005, and semiannually thereafter.

39. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of the Local Telephone Competition and Broadband Reporting ORDER, including the Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, reading "Marlene H. Dortch". The signature is fluid and cursive, with the first name "Marlene" and last name "Dortch" clearly legible.

Marlene H. Dortch
Secretary

APPENDIX A – LIST OF PARTIES

Comments	Abbreviation
AT&T Corp.	AT&T
BellSouth Corporation	BellSouth
California Public Utilities Commission and the People of the State of California	CPUC
Cingular Wireless LLC	Cingular
CTIA - The Wireless Association	CTIA
EchoStar Satellite L.L.C.	EchoStar
Kansas Corporation Commission staff	KCC
National Cable & Telecommunications Association	NCTA
National Telecommunications Cooperative Association	NTCA
Organization for the Promotion and Advancement of Small Telecommunications Companies	OPASTCO
SBC Communications Inc.	SBC
Sprint Corporation	Sprint
Verizon Telephone Companies	Verizon
Vermont Public Service Department	VPSD

Reply Comments	
AT&T Corp.	AT&T
BellSouth Corporation	BellSouth
California Public Utilities Commission and the People of the State of California	CPUC
Cingular Wireless LLC	Cingular
Sprint Corporation	Sprint
Verizon Telephone Companies	Verizon
Vermont Public Service Department	VPSD

Ex Parte Presentations	
U.S. Small Business Administration Office of Advocacy	SBA
Verizon	Verizon
Vermont Department of Public Service	VPSD

APPENDIX B – RULES AMENDED**AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS****PART 1 – PRACTICE AND PROCEDURE**

1. authority citation for Part 1 is amended to read as follows:

AUTHORITY: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, and 303(r).

2. Subsection 1.7001(b) of the Commission's rules is amended to read as follows:

§ 1.7001 Scope and Content of Filed Reports

(b) All commercial and government-controlled entities, including but not limited to common carriers and their affiliates (as defined in 47 U.S.C. § 153 (1)), cable television companies, Multichannel Multipoint Distribution Service (MMDS/MDS) "wireless cable" carriers, other fixed wireless providers, terrestrial and satellite mobile wireless providers, utilities and others, which are facilities-based providers, shall file with the Commission a completed FCC Form 477, in accordance with the Commission's rules and the instructions to the FCC Form 477, for each state in which they provide service.

* * * * *

PART 20 – COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for Part 20 is amended to read as follows:

AUTHORITY: 47 U.S.C. 154, 157, 160, 251-254, 303, and 332 unless otherwise noted.

2. Subsection 20.15(b) of the Commission's rules is amended to read as follows:

§ 20.15 Requirements under Title II of the Communications Act

(b) Commercial mobile radio service providers are not required to:

(1) File with the Commission copies of contracts entered into with other carriers or comply with other reporting requirements, or with §§ 1.781 - 1.814 and 43.21 of this chapter; except that commercial radio service providers that offer broadband service, as described in § 1.7001(a) or mobile telephony are required to file reports pursuant to §§ 1.7000 and 43.11 of this chapter. For purposes of this Subpart, *mobile telephony* is defined as real-time, two-way switched voice service that is interconnected with the public switched network utilizing an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless handoff of subscriber calls.

* * * * *

**PART 43 - REPORTS OF COMMUNICATION COMMON
CARRIERS AND CERTAIN AFFILIATES**

Part 43 of Title 47 of the Code of Federal Regulations (C.F.R.) is amended as follows:

1. The authority citation for Part 43 continues to read as follows:

AUTHORITY: 47 U.S.C. § 154; Telecommunications Act of 1996, Pub. L. 104-104, secs. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220 as amended.

2. Subsection 43.11(a) of the Commission's rules is amended to read as follows:

§ 43.11 Reports of Local Exchange Competition Data

(a) All common carriers and their affiliates (as defined in 47 U.S.C. §153 (1)) providing telephone exchange or exchange access service (as defined in 47 U.S.C. §153 (16) and (47)) or commercial mobile radio service (CMRS) providers offering mobile telephony (as defined in section 20.15(b)(1) of this chapter) shall file with the Commission a completed FCC Form 477, in accordance with the Commission's rules and the instructions to the FCC Form 477, for each state in which they provide service.

* * * * *

APPENDIX C – FINAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),⁷⁰ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (Notice).⁷¹ The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA. The comments received are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.⁷²

A. Need for, and Objectives of, the Report and Order

2. The Commission initiated this rulemaking and made specific proposals to improve its Form 477 local competition and broadband data-gathering program and to extend the program for five years beyond its currently designated sunset in March 2005. The Commission adopted the Form 477 in the Spring of 2000 to help the Commission and the public understand the extent of local telephone service competition and broadband services deployment, which is important to the nation's economic, educational, and social well-being.⁷³ The decisions reached in this Order will further that goal while minimizing burdens on marketplace competitors and innovators, as well as small businesses.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

3. In the IRFA, we stated that we would seek to minimize the burden imposed on smaller entities by establishing requirements for reporting that balanced the needs of the Commission to receive data on the development of local competition and deployment of broadband against the burden such reporting places on smaller entities. In response to the Notice, the Commission received comments from 14 parties and reply comments from 7 parties.⁷⁴ In addition, the Office of Advocacy, U.S. Small Business Administration (SBA), and the Vermont Public Service Department (VPSD) made *ex parte* presentations. Among those parties, only the SBA, the National Cable Television Association (NCTA), the National Telecommunications Cooperative Association (NTCA), and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) commented specifically on the IRFA. We note that many other commenters raised issues about the proposed rules and we encourage readers of this FRFA to consult the complete text of this Report and Order, which describes in detail our analysis of commenter proposals.

4. In its *ex parte* presentation regarding the IRFA, the VPSD made recommendations to simplify the expanded Form 477 proposed in the Notice. In its *ex parte* presentation, SBA recommends that the Commission consider less burdensome alternatives for small carriers, such as simplifying the

⁷⁰ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁷¹ *Local Telephone Competition and Broadband Reporting*, WC Docket No. 04-141, Notice of Proposed Rulemaking, 19 FCC Rcd 7364 (2004) (*Notice*), at Appendix A.

⁷² See 5 U.S.C. § 604.

⁷³ *Local Competition and Broadband Reporting*, CC Docket No. 99-301, Report and Order, 15 FCC Rcd. 7717 (2000).

⁷⁴ A list of parties that filed comments and reply comments appears in Appendix A, *supra*, of this Report and Order.

proposed Form 477 or establishing a "short form or Form 477-EZ" for small carriers previously exempt from reporting. OPATSCO stated that the Commission's estimated time to complete the proposed Form 477 of 15 hours is understated, and that the real number is 23 to 28 hours.⁷⁵ NTCA agreed with OPATSCO and urged the Commission to develop a new Form 477 that will reduce the amount of information required from small carriers and take 30 minutes or less to complete.⁷⁶ NTCA further stated that the lowering or removing of the current threshold exemption would result in an unwarranted burden on small carriers.⁷⁷ NCTA further recommended that the Commission establish a new threshold of "not lower than 100 broadband lines per state" to reduce that burden, while at the same time achieving the Commission's objectives.⁷⁸

5. In an effort to balance the needs of the Commission with the costs our data gathering may place on smaller entities, the Commission has taken the suggestions of OPATSCO, NTCA and the SBA and simplified the Form 477 proposed in the Notice. By doing so, we will lessen the burden on all entities required to submit reports. We believe that these modifications satisfy SBA's request that we significantly reduce the burdens for those small entities that must comply. Moreover, we conclude that these modifications will allow the Commission to comply with Congress' charge in section 706 of the 1996 Act to determine whether advanced telecommunications capability, commonly known as "broadband," is being deployed to *all* Americans. In order to gain the comprehensive understanding – as called for in section 706 – of the broadband market, particularly in rural and inner-city areas and among demographic groups that are traditionally underserved, it is necessary to gather data from entities that are most likely to serve these areas and groups, which includes some smaller entities.

6. Among the other actions taken to reduce the overall burden on small entities, we retain the "decoupled" feature where the broadband and local competition reporting requirements are separate on the Form 477. Thus, we reduce reporting burdens on traditionally smaller providers by only requiring data that covers services they actually offer.

7. To further reduce the potential burden this data gathering program may place on smaller entities, we retain several of the time-saving and burden-reducing features of the original Form 477. Specifically, the report frequency remains semiannual. We still require carriers to report information about broadband connections and local telephone services on a state-by-state basis. To supplement this information, we ask providers of broadband connections and local exchange services to provide lists of the Zip Codes in which they serve at least one customer. Finally, we reaffirm that this reporting scheme continues to offer the best balance of our need to achieve geographically disaggregated information while minimizing burdens on all entities, including small entities.

8. Overall, we believe that our approach (*e.g.*, simplifying the form and retaining the burden-reducing features of the original Form 477) will result in a program that is not overly burdensome on reporting entities, and thus balances the concerns raised by SBA and other commenters with the Commission's need to gain a better understanding of developments in these markets.

⁷⁵ OPATSCO Comments at 6.

⁷⁶ NTCA Comments at 2-4.

⁷⁷ *Id.*

⁷⁸ NCTA Comments at 3, 13-14.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

9. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.⁷⁹ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁸⁰ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁸¹ A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁸²

10. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, is the data that the Commission publishes in its *Trends in Telephone Service* report.⁸³ The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers,⁸⁴ Paging,⁸⁵ and Cellular and Other Wireless Telecommunications.⁸⁶ Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

11. We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."⁸⁷ The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any

⁷⁹ 5 U.S.C. § 604(a)(3).

⁸⁰ 5 U.S.C. § 601(6).

⁸¹ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

⁸² 15 U.S.C. § 632.

⁸³ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, Table 5.3 (May, 2004) (*Trends in Telephone Service*). The amounts listed in this latest edition are current to October 22, 2003.

⁸⁴ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517110 (changed from 513310 in October 2002).

⁸⁵ *Id.* § 121.201, NAICS code 517211 (changed from 513321 in October 2002).

⁸⁶ *Id.* § 121.201, NAICS code 517212 (changed from 513322 in October 2002).

⁸⁷ 5 U.S.C. § 601(3).

such dominance is not "national" in scope.⁸⁸ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

12. *Wired Telecommunications Carriers*. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.⁸⁹ According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year.⁹⁰ Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more.⁹¹ Thus, under this size standard, the great majority of firms can be considered small.

13. *Incumbent Local Exchange Carriers (ILECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁹² According to Commission data,⁹³ 1,310 carriers reported that they were engaged in the provision of local exchange services. Of these 1,310 carriers, an estimated 1,025 have 1,500 or fewer employees and 285 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted herein.

14. *Competitive Local Exchange Carriers (CLECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to "Other Local Exchange Carriers," all of which are discrete categories under which TRS data are collected. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁹⁴ According to Commission data,⁹⁵ 563 companies reported that they were engaged in the provision of either competitive access provider services or competitive local

⁸⁸ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

⁸⁹ 13 C.F.R. § 121.201, NAICS code 517110 (changed from 513310 in October 2002).

⁹⁰ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513310 (issued October 2000).

⁹¹ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

⁹² 13 C.F.R. § 121.201, NAICS code 517110 (changed from 513310 in October 2002).

⁹³ *Trends in Telephone Service* at Table 5.3.

⁹⁴ 13 C.F.R. § 121.201, NAICS code 517110 (changed from 513310 in October 2002).

⁹⁵ *Trends in Telephone Service* at Table 5.3.

exchange carrier services. Of these 563 companies, an estimated 472 have 1,500 or fewer employees and 91 have more than 1,500 employees.⁹⁶ In addition, 37 carriers reported that they were "Other Local Exchange Carriers." Of the 37 "Other Local Exchange Carriers," an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees.⁹⁷ Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the rules and policies adopted herein.

15. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁹⁸ According to Commission data,⁹⁹ 281 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 281 companies, an estimated 254 have 1,500 or fewer employees and 27 have more than 1,500 employees.¹⁰⁰ Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by the rules and policies adopted herein.

16. *Cellular Licensees.* The SBA has developed a small business size standard for Cellular and Other Wireless Telecommunication, which consists of all such firms having 1,500 or fewer employees.¹⁰¹ According to Census bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.¹⁰² Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.¹⁰³ Thus, under this size standard, the majority of firms can be considered small.

17. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years.¹⁰⁴ For Block F, an additional classification for "very small business" was added and is defined as

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ 13 C.F.R. § 121.201, NAICS code 517110 (changed from 513310 in October 2002).

⁹⁹ *Trends in Telephone Service* at Table 5.3.

¹⁰⁰ *Id.*

¹⁰¹ 13 C.F.R. § 121.201, NAICS code 517212 (changed from 513322 in Oct 2002).

¹⁰² U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513322 (issued Oct. 2000).

¹⁰³ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

¹⁰⁴ See *Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, Report and Order, 61 FR 33859 (July 1, 1996); see also 47 C.F.R. § 24.720(b).